

**AGREEMENT BETWEEN THE GOVERNMENT OF  
THE REPUBLIC OF COLOMBIA AND THE GOVERNMENT  
OF THE UNITED STATES OF AMERICA FOR THE  
EXCHANGE OF TAX INFORMATION**

The Government of the Republic of Colombia and the Government of the United States of America signed an Agreement for the Exchange of Tax Information at Santafé de Bogotá on the 21<sup>st</sup> day of July of 1993, which never entered into force; and presently, the Government of the Republic of Colombia and the Government of the United States of America agree to enter into the Agreement for the Exchange of Tax Information (hereinafter referred to as "the Agreement"), in accordance with the following provisions.

**ARTICLE 1**

**OBJECT AND SCOPE OF APPLICATION OF THE AGREEMENT**

**1. OBJECT**

The Contracting States shall assist each other to facilitate the exchange of information for assuring the accurate determination, assessment and collection of taxes covered by the Agreement, with a view to prevent and combat within their respective jurisdictions, fiscal evasion, fraud, and avoidance and develop improved information sources for tax matters.

**2. LEGAL LIMITATIONS**

The Contracting States shall cooperate with each other to carry out the objective of this Agreement. Such cooperation shall be provided through exchange of information authorized pursuant to Article 4 and such related measures as may be agreed upon by the competent authorities of the Contracting States pursuant to Article 5.

**3. SCOPE OF APPLICATION**

Information shall be exchanged to fulfill the purpose of this Agreement without regard to whether the person to whom the information relates is, or whether the information is held by, a resident or national of the Contracting States.

**ARTICLE 2**

**TAXES COVERED BY THE AGREEMENT**

**1. TAXES COVERED**

This Agreement shall apply to the following taxes:

- a) In the case of Colombia, the following national taxes: income tax and complementary taxes, sales tax, stamp tax, and bank debit tax.
- b) In the case of the United States of America: all federal taxes.

## 2. IDENTICAL, SIMILAR, SUBSTITUTIVE, OR ADDITIONAL TAXES

This Agreement shall apply also to any identical or similar tax imposed after the date of signature of the Agreement or taxes in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any change in their legislation, as well as judicial decisions, which may affect their obligations pursuant to this Agreement.

## 3. ACTIONS BARRED BY STATUTE OF LIMITATIONS

The Agreement shall not apply to the extent that an action or proceeding concerning taxes covered by this Agreement is barred by the statute of limitations of the applicant State.

## 4. STATE TAXES, MUNICIPAL TAXES, ETC.

This Agreement shall not apply to taxes imposed by states, provinces, departments, regions, municipalities or other political subdivisions or possessions that are under the jurisdiction of the Contracting States.

# **ARTICLE 3 DEFINITIONS**

## 1. DEFINITIONS

For purposes of this Agreement:

a) The term competent authority means:

i) In the case of Colombia, the Director of the Special Administrative Unit Directorate of Customs and National Taxes or his delegate.

ii) In the case of the United States of America, the Secretary of the Treasury or his delegate.

b) The term national means any individual and any legal entity or any other collective entity, deriving its status as such from the laws in force in the Contracting States.

c) The term person includes any individual, legal entity, or any other collective entity according to the laws of the Contracting States.

d) The term tax means any tax to which the Agreement applies.

e) The term information means any fact or statement, in any form whatever, and that may be relevant or material to the administration and enforcement of taxes covered by this Agreement, including:

i) the testimony of individuals,

ii) the documents, records or tangible personal property in the possession of a person or Contracting State and

iii) expert opinions, technical concepts, valuations and certifications.

f) The term applicant State means the Contracting State applying for or receiving information; and the term requested State means the Contracting State providing or requested to provide information.

g) For purposes of determining the geographical area of Colombia within which it may exercise its jurisdiction to obtain or compel production of information, Colombia means the territory of Colombia.

h) For purposes of determining the geographical area of the United States of America within which it may exercise its jurisdiction to obtain or compel production of information, the United States means the United States of America, including Puerto Rico, the Virgin Islands, Guam and any other possession or territory of the United States.

## 2. UNDEFINED TERMS

Any term not defined in this Agreement shall have the meaning which it has under the laws of the Contracting States concerning taxes covered by this Agreement, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 5.

## **ARTICLE 4 EXCHANGE OF INFORMATION**

### 1. OBJECT OF THE EXCHANGE

The competent authorities of the Contracting States shall exchange information to administer and enforce their domestic laws concerning taxes covered by this Agreement, including information to affect the determination, assessment, and collection of such taxes, the recovery and enforcement of tax claims, the investigation or prosecution of alleged tax crimes and violations involving the contravention of tax laws and regulations.

## 2. GENERAL AND AUTOMATIC INFORMATION

The competent authorities of the Contracting States shall automatically transmit information to each other that they consider relevant to accomplish the objectives of this Agreement. The competent authorities shall agree on the type of information, the form, language, and procedures to be used to exchange such information.

## 3. SPONTANEOUS INFORMATION

The competent authority of a Contracting State shall spontaneously transmit to the competent authority of the other State information which has come to the attention of the first-mentioned State and which is likely to be relevant to, and bear significantly on, accomplishment of the purposes referred to in paragraph 1. The competent authorities shall determine the information to be exchanged, establishing the form and language in which it will be transmitted.

## 4. SPECIFIC INFORMATION

The competent authority of the requested State shall provide information upon specific request by the competent authority of the applicant State for the purposes referred to in paragraph 1 of this Article. If the information available in the tax files of the requested State is not sufficient to enable compliance with the request, that State shall take all measures, including compulsory measures, to provide the applicant State with the information requested.

### a) Powers of the requested State

The requested State shall have the authority to:

- i) examine any books, papers, records, or other personal property which may be relevant or material to such inquiry;
- ii) question any person having knowledge or in possession, custody or control of information which may be relevant or material to such inquiry; and
- iii) compel any person having knowledge or in possession, custody or control of information which may be relevant or material to such inquiry, to appear at a stated time and place and testify under oath and produce books, papers, records, or other personal property.

b) Privileges

In the execution of a request, the privileges granted under the laws or practices of the applicant State shall not be applied in the requested State. The claim for privileges under the laws or practices of the applicant State shall be exclusively determined by the courts of such State, and the claim for privileges under the laws or practices of the requested State shall be exclusively determined by the courts of that State.

c) Objection procedures

The Contracting States may establish administrative or judicial objection or claim procedures, with a view to prevent the abuse of the exchange of information authorized by this Agreement.

5. ACTIONS OF THE REQUESTED STATE FOR RESPONDING TO A SPECIFIC REQUEST

When information is requested by a Contracting State pursuant to the foregoing paragraph, the requested State shall obtain and provide the information in the same manner, as if the tax of the applicant State were the tax of the requested State and were being imposed by the latter. However, if specifically requested by the competent authority of the applicant State, the requested State shall:

- a) specify the time and place for the taking of testimony or the production of books, papers, records, and other personal property;
- b) place the individual giving testimony or producing books, papers, records, and other personal property under oath;
- c) secure for its examination, without editing them, the original books, papers, records, and other personal property;
- d) secure or produce true copies of originals (including books, papers, testimony and records);
- e) certify or obtain a certification from the corresponding bodies, of the authenticity of books, papers, records, and other personal property produced, as the case may be;
- f) examine the individual producing books, papers, records and other tangible property regarding the purpose for which and the manner in which

the item produced is or was maintained;

g) permit the competent authority of the applicant State, to provide written questions to be answered by the individual testifying or producing books, papers, records, and other personal property;

h) perform any other act not in violation of the laws, or at variance with, the administrative practices of the requested State;

i) certify either that the procedures requested by the competent authority of the applicant State were followed or that the procedures requested could not be followed, with an explanation of the reasons therefore;

j) permit, during the execution of a request for deposition, the presence of the taxpayers or the accused under investigation, any counsel thereof, and representatives of the taxing authority of the applicant State; and

k) provide individuals permitted to be present with an opportunity to question, through the executing authority, the individual giving testimony or producing books, papers, records or other personal property.

## 6. SCOPE OF THE TRANSMISSION OF INFORMATION

The exchange of information referred to in this Agreement does not compel the Contracting States:

a) to supply information the disclosure of which would be contrary to public policy;

b) to carry out administrative measures at variance with their respective laws or regulations;

c) to supply particular items of information which are not obtainable under their respective laws or regulations;

d) to supply information which would disclose any commercial, industrial, trade, professional, or business secret or trade process; and

e) to supply information requested by the applicant State to administer or enforce a provision of the tax law of the applicant State, or any requirement connected therewith, which discriminates against a national of the requested State. A provision of tax law, or connected requirement, will be considered to be discriminatory against a national of the requested State if it is more

burdensome with respect to a national of the requested State than with respect to a national of the applicant State in the same circumstances. For purposes of the preceding sentence, there is no discrimination when the applicant State taxes on a worldwide basis and the requested State does not. The provisions of this subparagraph shall not be construed so as to prevent the exchange of information with respect to: in the case of Colombia, that which is related to the income tax on dividends and participation of non-residents and the complimentary tax on remittances abroad; and, in the case of the United States, the tax on branch profits or the excess interest of a branch or on the premium income of foreign insurers.

f) Notwithstanding subparagraphs (a) through (e) of this paragraph, the requested State shall have the authority to obtain and provide, through its competent authority, information held by financial institutions, nominees, or persons acting in agency or fiduciary capacity (not including information that would reveal confidential communications between a client and an attorney, solicitor or other legal representative where the client seeks legal advice), or information respecting ownership interests in a person.

## 7. REGULATIONS FOR EXECUTING A REQUEST

Except as provided in paragraph 6 of this Article, the provisions of the preceding paragraphs shall be construed so as to impose on a Contracting State the obligation to use all legal means and its best efforts to execute a request. In addition, the competent authority of the requested State shall allow representatives of the applicant State to enter the requested State to interview individuals and examine books and records with the consent of the individuals contacted.

## 8. USE OF THE INFORMATION RECEIVED

Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities of the applicant State, including judicial and administrative bodies involved in the determination, assessment, collection, and administration of taxes under this Agreement, the recovery of fiscal claims derived from such taxes, the enforcement of the tax laws, the prosecution of fiscal violations or the determination of administrative appeals in relation to such taxes, and the oversight of the above. Such persons or authorities may use the information only for tax purposes and may disclose it in public court proceedings or in judicial decisions of the applicant State in relation to such matters.

**ARTICLE 5**  
**MUTUAL AGREEMENT PROCEDURE**

**1. PROGRAMS FOR IMPLEMENTING THE AGREEMENT**

The competent authorities of the Contracting States shall implement programs to carry out the purposes of this Agreement. These programs may include, in addition to exchanges of information specified in Article 4, other measures to improve tax compliance, such as technical assistance, training, exchange of technical know-how, development of new audit techniques, execution of simultaneous and/or joint examinations and investigations of fiscal violations and crimes, identification of new areas of tax evasion and avoidance, and joint studies of such tax evasion and avoidance areas.

**2. INTERPRETATION AND APPLICATION OF THE AGREEMENT**

The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. In particular, the competent authorities may agree to a common meaning of a term.

**3. DIRECT COMMUNICATION OF THE COMPETENT AUTHORITIES**

The competent authorities of the Contracting States may communicate with each other directly in order to carry out the provisions of this Agreement.

**ARTICLE 6**  
**COSTS**

**1. ORDINARY AND EXTRAORDINARY COSTS**

Unless the competent authorities of the Contracting States otherwise agree, ordinary costs incurred for the execution of this Agreement shall be borne by the requested State and extraordinary costs shall be borne by the applicant State.

**2. DETERMINATION OF EXTRAORDINARY COSTS**

The competent authorities of the Contracting States shall determine by mutual agreement when a cost is extraordinary.

**ARTICLE 7**  
**ENTRY INTO FORCE**

This Agreement shall enter into force upon an exchange of notes by the duly authorized representatives of the Contracting States by which they confirm their mutual agreement that both sides have met the constitutional and legal requirements necessary to effectuate this Agreement.

**ARTICLE 8  
TERMINATION**

This Agreement shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Agreement at any time after its entry into force provided that at least three (3) months prior notice of its intention to terminate it has been given to the other Contracting State through diplomatic channels.

DONE at Bogota, D.C., in duplicate, in the English and Spanish languages, the two texts having equal authenticity, this 30th day of March, 2001.

**FOR THE GOVERNMENT OF  
THE REPUBLIC OF COLOMBIA:**

**FOR THE GOVERNMENT OF  
THE UNITED STATES OF AMERICA:**

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Guillermo Fino Serrano  
Director General, DIAN

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Anne W. Patterson  
Ambassador